

THE STATE OF TEXAS §
COUNTY OF HARRIS §

01-0810
3088

I. PARTIES

A. Address

THIS AGREEMENT FOR AUTOMATED FUEL SYSTEMS MAINTENANCE AND SUPPORT SERVICES, PROFESSIONAL SERVICES, AND EXPANSION

("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **MULTIFORCE SYSTEMS CORPORATION** ("Contractor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
Director of Finance & Administration or Designee City of Houston P.O. Box 1562 Houston, Texas 77251	Multiforce Systems Corporation 101 Wall Street Princeton, NJ 08540

The Parties agree as follows:

B. Table of Contents

The parties agree to the terms and conditions of this Agreement. This Agreement consists of the following sections:

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C. Parts Incorporated

The above-described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

In the event of any conflict or inconsistency between or among the provisions of the sections or exhibits, it is agreed that the sections shall control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL

By: 

Name: THOMAS M. BALES

Title: SECRETARY

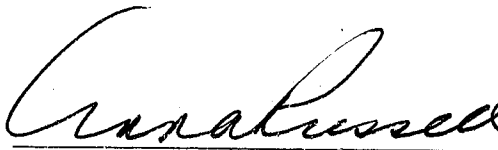
MULTIFORCE SYSTEMS CORPORATION

By: 

Name: THOMAS M. BALES

Title: PRESIDENT

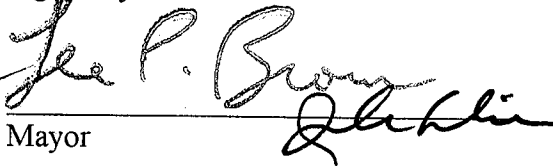
ATTEST/SEAL:



City Secretary

CITY OF HOUSTON, TEXAS

Signed by:



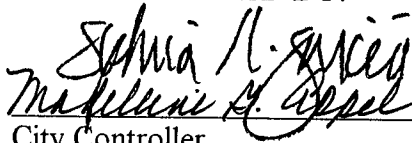
Mayor

APPROVED:



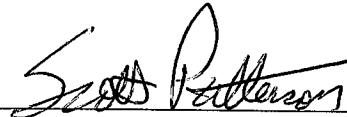
Director, Finance and Administration
Department

COUNTERSIGNED BY:



City Controller

APPROVED AS TO FORM:



Assistant City Attorney

L.D. File No. 034-9500186-005

DATE COUNTERSIGNED:

September 10, 2001

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

An "Automated Fuel System Expansion" is defined in Section III. A. (6) (a).

An "Automated Fuel System Expansion Acceptance Notice" is defined in Section III. A. (6) (c).

An "Automated Fuel System Expansion Document" is defined in Section III. A. (6) (b) (ii).

An "Automated Fuel System Expansion Request" is defined in Section III. A. (6) (b) (i).

"Business Day" means any calendar day except Saturday, Sunday and full-day holidays for employees of the City (as designed by City Council).

"Business Hours" means the time between 8:00 a.m. and 4:00 p.m. Central Standard Time on Business Days.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contract Term" means the Initial Term and any Renewal Terms.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Director of the Finance & Administration Department, or the person he or she designates.

"Documentation" means standard, visually-readable materials provided by Contractor for

use by the City in connection with each Equipment item.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

"Equipment" means the Hardware and Software.

"Hardware" means the hardware products for which Contractor is to provide Hardware Maintenance and Support Services under this Agreement, as well as all hardware products Contractor provides to the City under an Automated Fuel System Expansion.

"Hardware Maintenance and Support Services" are described in Section III. A. (1).

"Initial Term" is defined in Section V. A.

An "Interim Invoice" is defined in Section IV. A. (4) (a).

"Notice to Proceed" means a written communication from the Director to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Preventive Maintenance" includes planned activities deemed necessary by Contractor to keep the Equipment functioning according to contractor's specifications. Such maintenance, if any, is based upon the specific performance standards of individual products, as determined by Contractor.

"Professional Services" are the professional services that Contractor shall provide when requested by the Project Manager as set forth in Section III. A. (5) or as part of Contractor's performance of an Automated Fuel System Expansion as set forth in Section III. A. (6).

A "Professional Services Document" is defined in Section III. A. (5) (d) (iii).

A "Professional Services Acceptance Notice" is defined in Section III. A. (5) (e).

"Project Leader" is defined in Section III. M.

"Project Manager" means the person designated by the Director to administer and manage this Agreement.

"Reimbursable Travel Expenses" are travel expenses incurred by Contractor in the course of Contractor's performance of Professional Services or of an Automated Fuel System Expansion for which the City will reimburse Contractor, as discussed in Sections III. A. (5) (d) (ii) and III. A. (6) (b) (ii) 6.

"Remedial Maintenance" means the furnishing of any goods and services by Contractor to place the Equipment in good operating condition after it fails to operate in accordance with Contractor's hardware functional specifications.

"Renewal Terms" are defined in Section V. A.

"Site Preparation" is defined in Section III. A. (6) (b) (ii) 4.

"Software" means the software products for which Contractor shall provide Software Maintenance and Support Services under this Agreement, as well as all software products Contractor provides to the City under an Automated Fuel System Expansion.

"Software Maintenance and Support Services" are defined in Section III. A. (2).

III. DUTIES OF CONTRACTOR

A. Scope of Services

Under this Agreement, Contractor shall provide the following services:

(1) Hardware Maintenance and Support Services.

- (a) Contractor shall render Hardware Maintenance and Support services during Business Hours to maintain in good condition and working order the Hardware listed in Exhibit "B" throughout the term of this Agreement. Contractor shall provide Preventive Maintenance on a scheduled basis, the schedule to be based upon Contractor's opinion of the particular service required for each item of Hardware. Contractor shall also provide Remedial Maintenance on an unscheduled basis or when requested by the Director.
- (b) Contractor shall provide Hardware Maintenance and Support Services to the City during the term of this Agreement in accordance with the Hardware and Software Maintenance and Support Services Fees set forth in Section IV. A. (1).
- (c) Replacement Parts.
 - (i) Additional Replacement Parts. Contractor shall be responsible for providing all replacement parts necessary to perform the Hardware Maintenance and Support Services set out in this Agreement, with the exception of any Viro Receiver Assemblies or VIU3 parts required to restore the Hardware to good condition and working order, for which Contractor shall charge the City the price per part set forth in Exhibit "C" (the "Additional Replacement Parts"). In the event that Contractor determines that it must provide an Additional Replacement Part in order to restore the Hardware to

full operational condition under this Agreement, Contractor shall obtain the Director's written approval prior to providing such an Additional Replacement Part to the City under this Agreement.

(ii) FuelForce Hardware Replacement Parts Inventory.

- (A) At all times during the term of this Agreement, Contractor shall provide the City with the type and number of FuelForce Hardware replacement parts as set forth in Exhibit "D" so that the City may maintain an inventory of such replacement parts (the "FuelForce Hardware Replacement Parts Inventory.") The FuelForce Hardware Replacement Parts Inventory shall be used by a third party City contractor to replace parts in the FuelForce Hardware items set forth in Exhibit "B" (the "City Service Provider"). Once a part from the FuelForce Hardware Replacement Parts Inventory is used to replace a defective part in the FuelForce Hardware, the City shall provide the defective part to Contractor, and within ten (10) Business Days of receiving such a defective part Contractor shall provide the City with a new replacement part of that type that fully meets the requirements of this Agreement so that the City may include the new part in its FuelForce Hardware Replacement Parts Inventory. None of the replacement parts in the FuelForce Hardware Replacement

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Parts Inventory are Additional Replacement Parts.

- (B) The City Service Provider shall be certified by Contractor as an Authorized Service Representative (ASR) on FuelForce Hardware. So long as the City ensures that its City Service Provider is certified as an ASR by Contractor at all times during the term of this Agreement, Contractor shall remain fully responsible for performing all automated fuel systems maintenance and support services set forth in this Agreement, even in the event that such maintenance and support services are required due to the negligence, act, or omission of the City Service Provider. The City's current City Service Provider as of the Countersignature Date of this Agreement is DUPS, Inc. Should the City choose to use another vendor to serve as the City Service Provider during the term of this Agreement, the City shall ensure that such other vendor is certified as an ASR by Contractor before permitting that vendor to serve as the City Service Provider.

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- (iii) Replacement Part Requirements. All replacement parts provided by Contractor under this Agreement shall either be new parts or parts equivalent in performance to new parts when used with the Equipment. Parts removed from the Equipment shall become the

property of Contractor.

(d) Engineering changes, as determined applicable by Contractor, shall be installed by Contractor on the Equipment at no charge to the City.

(2) Software Maintenance and Support Services. Contractor shall provide Software Maintenance and Support services during the term of this Agreement for the Software items set forth in Exhibit "B" in accordance with the fees set forth in Exhibit "B". Software Maintenance and Support services include, but are not limited to, the following tasks:

- Identification and resolution of Software problems.
- Consultation assistance during installation and upgrade of software.
- Clarification of Contractor's Documentation and Release bulletins.
- Response to questions on Software use regarding compatibility with other software and general questions regarding the capabilities of the Software.
- Correction or replacement of the Software under the maintenance agreement or provision of services necessary to remedy programming errors attributable to Contractor.
- Assistance in resolving problems related to the installation of updated and corrective information.
- Provision of personnel at all times during Business Hours to provide Software Maintenance and Support Services to the City. Contractor shall use best efforts to return all telephone calls for requests for Software Maintenance and Support Services within four (4) hours after it receives notification from the City.

- Making available to City at no cost, during the term of this Agreement and during any period that City is under a Software Maintenance and Support services agreement with Contractor, any generally incorporated improvements and enhancements to the Software that are not designated as options.

(3) On-Site Scheduling for Hardware and Software Maintenance and Support.

Contractor and the Project Manager shall jointly schedule all routine on-site visits to be performed by Contractor for the City. Each schedule shall be confirmed 5 Business Days in advance. This shall include departmental visits, training, testing and installation.

- (4) Trouble Tracking Services. As part of its performance of Hardware and Software Maintenance and Support under this Agreement, Contractor shall provide trouble tracking services by maintaining a trouble log for the City to keep track of all calls received by Contractor from City. Contractor shall assign a reference number to each call received by the City and shall prepare and send to the City, by facsimile or by e-mail, a monthly report summarizing all closed and outstanding items. All calls not closed within ten (10) Business Days shall be reviewed by both parties for assessment and prioritization at the request of the Project Manager.

(5) Professional Services.

- (a) Overview. Under this Agreement, Contractor shall provide the City with professional services for the automated fuel systems being maintained and supported by Contractor under this Agreement (the "Professional Services") in accordance with the procedures set forth in this Section III.

A. (5).

- (b) Training Professional Services. For training Professional Services, Contractor shall plan and provide a thorough program of instructional services, including but not limited to classroom training for (i) the Equipment troubleshooting system, (ii) the end-user departmental application, by function, and (iii) on-site and remote applications for the department and citywide coordinators and system administrators, sufficient to instruct certain City personnel, as designated by the Project Manager, to proficiently meet the Hardware and Software instructional and operation requirements for which the Hardware and Software was intended. Contractor's instructional services which may be conducted at various City locations, designated by the Project Manager, shall include all appropriate Documentation. The Documentation shall include (i) system Documentation with flow diagrams (confidential), (ii) hard-copy with reproduction rights of all applications, and (iii) general systems procedures by department with operational/system flow chart, and (iv) visual aids and any other item(s) required to provide City personnel with a thorough working knowledge of the Hardware and Software and the ability to administer, manage and operate the fuel sites in accordance with the duties assigned to such personnel. An instructional site, other than a City site, may be used, if mutually agreed to by the parties. Contractor shall provide a draft copy of its educational materials to the Project Manager at least ten (10) Business Days prior to commencing an educational service, and

Contractor shall provide a final version of such educational materials (which shall incorporate any comments or changes requested by the Project Manager) at least two (2) Business Days prior to commencing an educational service. Such educational materials shall consist of at least one (1) complete set of training materials for each City attendee, unless the parties agree to another arrangement. The educational materials shall be modified by the Contractor to reflect all City customizations, flow charts and diagrams and all other pertinent information directly applicable to the City's operation.

(c) Software Development Testing.

- (i) For Software Development Testing, the Contractor shall analyze and prepare written specifications, customizations or modifications requested by the City (the "CMR") for any application that requires modification or customization.
- (ii) In addition, the CMR shall include a working document that identifies Software application procedures in detail, a detail plan for testing the Software, criteria for acceptance of the Software and the necessary Documentation for the Software. The CMR document shall be deemed accepted by the City ("CMR Acceptance") upon written approval of such document by the Project Manager. Non-acceptance of the CMR by the City shall be communicated to the Contractor in writing, citing the specific reasons for non-acceptance.

- (iii) The Contractor shall conduct a quality assurance test of the Customized Software, in accordance with the acceptance criteria contained in the written CMR documentation. The City shall have a reasonable test period within which to reject each item of Customized Software or interface covered by a written CMR and installed by Contractor citing specific reason therefor.
 - (iv) Contractor shall conduct an additional test on the City's computer. Should this uncover any problems that substantially reduces the ability of the requirement to function, as defined in the CMR, Contractor shall correct it within thirty (30) Business Days of discovery or an extended period of time as mutually agreed upon by the City and Contractor.
- (d) Requesting and Documenting Professional Services.
- (i) Exhibit "A.1" sets forth the Professional Services that the City can obtain from Contractor under this Agreement. In the event that the Project Manager wishes to obtain Professional Services from Contractor under this Agreement, the Project Manager shall submit a written request to Contractor setting forth the specific Professional Services from Exhibit "A.1" that Contractor is requested to perform and the City's specific requirements for those Professional Services (a "Professional Services Request").
 - (ii) Upon receipt of a Professional Services Request, Contractor shall identify its prices to provide the requested Professional Services to

the City, which shall equal the "Unit Costs" for the requested Professional Services as set forth in Exhibit "A.1". Contractor shall also identify any amounts the City shall be required to reimburse Contractor for travel by Contractor personnel to the City in order to provide the requested Professional Services (a "Reimbursable Travel Expense"). The Reimbursable Travel Expense for each Contractor employee shall not exceed \$1,600.00 for round-trip travel.

- (iii) In the event that the Project Manager agrees to Contractor's total cost to provide the requested Professional Services to the City and the associated Reimbursable Travel Expenses proposed by Contractor, the Project Manager and Contractor shall document in a written "Professional Services Document" (1) the specific Professional Services to be performed by Contractor, (2) the total cost that Contractor shall charge the City for its performance of those Professional Services, and (3) any Reimbursable Travel Expenses associated with those Professional Services. Following the signature of an Professional Services Document by the Project Manager and Contractor, Contractor shall proceed with performing the Professional Services set forth in the Professional Services Document.
- (iv) A Professional Services Document shall only contain a description of the specific Professional Services to be performed by Contractor,

the total cost that Contractor shall charge the City for its performance of those Professional Services, and any Reimbursable Travel Expenses associated with those Professional Services. Any other information contained in a Professional Services Document shall be null and void and have no contractual effect, regardless of the party that requests the inclusion of such information in that Document. In the event of an inconsistency between this Agreement and the contents of a Professional Services Document, the provisions of this Agreement shall control over the contents of the Professional Services Document.

- (v) In the event that Contractor provides any Professional Services that are not specifically documented in a Professional Services Document signed by the Project Manager and Contractor, or there is any travel by Contractor personnel that has not been specifically identified as a Reimbursable Travel Expense in a Professional Services Document signed by the Project Manager and Contractor, then Contractor shall not be compensated for its performance of such Professional Services or for incurring such travel expenses, **and Contractor shall be considered to have gratuitously provided such Professional Services and travel expenses under this Agreement.**

- (e) Acceptance of Professional Services. If, following Contractor's performance of all of the Professional Services set forth in a Professional

Services Document, the Project Manager determines that Contractor has performed such Professional Services in accordance with the terms of the associated Professional Services Document and this Agreement, then the Project Manager shall provide a written "Professional Services Acceptance Notice" to Contractor documenting such acceptance.

- (f) Initial Professional Services. As of the Countersignature Date of this Agreement, the City intends to obtain Professional Services from Contractor under this Agreement that shall include
- (i) 25 days of Professional Services at \$900.00 a day, for a cost of \$22,500.00, and
 - (ii) Reimbursable Travel Expenses for Contractor employees for two (2) round-trips at \$1,600.00 each and one (1) round-trip charge of \$710.00, for total Reimbursable Travel Expenses of \$3,910.00.

Therefore, the total cost of such "Initial Professional Services" shall equal \$26,410.00. Following the Countersignature Date, the Project Manager and Contractor shall follow the procedures set forth in this Section III. A. (5) in order to request, document, perform, and conduct acceptance testing of such Initial Professional Services.

(6) Automated Fuel System Expansion.

- (a) Definition. Under a previous City contract, Contract Number 036446, Ordinance 96-418 (the "Prior Contract"), the City contracted with Contractor for (a) Contractor's provision of the Equipment so that the Equipment operates together as a System, in accordance with the Prior

Contract and with Contractor's Documentation (the "Automated Fuel System"). Under this Agreement, Contractor shall also provide all hardware, software, and services necessary to expand the Automated Fuel System to new City locations as requested by the Project Manager ("Automated Fuel System Expansion").

(b) Requesting and Documenting Automated Fuel System Expansions.

(i) Automated Fuel System Expansion Request. In the event that the Project Manager wishes Contractor to perform an Automated Fuel System Expansion under this Agreement, the Project Manager shall submit a written request to Contractor setting forth the City's requirements for such an Automated Fuel System Expansion (an "Automated Fuel System Expansion Request").

(ii) Automated Fuel System Expansion Negotiation. Upon Contractor's receipt of an Automated Fuel System Expansion Request, the Project Manager and Contractor shall document the following business and technical requirements for Contractor's provision of the requested Automated Fuel System Expansion in an "Automated Fuel System Expansion Document":

1. The specific City location(s) where the Automated Fuel System Expansion is to be performed.
2. The functionality that such an expanded Automated Fuel System implemented at such City location(s) shall provide.
3. The specific hardware and software items Contractor shall

provide to perform the requested Automated Fuel System Expansion, and Contractor's price to provide such hardware and software items.

4. Any required preparation of the City location to which the Automated Fuel System is to be expanded ("Site Preparation") and, if such Site Preparation is required, Contractor's price to perform such Site Preparation;
5. All Professional Services that Contractor shall need to perform in order to complete the requested Automated Fuel System Expansion, and Contractor's price to perform each Professional Service. Such Professional Services shall consist of one or more of the Professional Services set forth in Exhibit "A.1". Contractor's price to provide each Professional Service shall equal the "Unit Cost" for that Professional Service as set forth in Exhibit "A.1".
6. The amount the City shall reimburse Contractor for travel by Contractor personnel to the City in order to perform such an Automated Fuel System Expansion (a "Reimbursable Travel Expense"). The Reimbursable Travel Expense for each Contractor employee shall not exceed \$1,600.00 for round-trip travel.
7. The schedule under which Contractor shall perform the requested Automated Fuel System Expansion (the

“Automated Fuel System Expansion Schedule”).

- (iii) In the event that the Project Manager and Contractor agree to the business and technical requirements for Contractor’s performance of an Automated Fuel System Expansion as documented in a written Automated Fuel System Expansion Document, then the Project Manager and Contractor shall sign such an Automated Fuel System Expansion Document. Following the signature of an Automated Fuel System Expansion Document by the Project Manager and Contractor, Contractor shall proceed with performing the Automated Fuel System Expansion in accordance with that Document.
- (iv) An Automated Fuel System Expansion Document shall only contain a description of the business and technical requirements identified in Section III. A. (6) (b) (ii) for Contractor’s performance of an Automated Fuel System Expansion. Any other information contained in an Automated Fuel System Expansion Document shall be null and void and have no contractual effect, regardless of the party that requests the inclusion of such information in that Document. In the event of an inconsistency between this Agreement and the contents of a Automated Fuel System Expansion Document, the provisions of this Agreement shall control over the contents of the Automated Fuel System Expansion Document.

(v) In the event that Contractor provides any hardware, software, Site Preparation, or Professional Services that are not specifically documented in a Automated Fuel System Expansion Document signed by the Project Manager and Contractor, or there is any travel by Contractor personnel that has not been specifically identified as a Reimbursable Travel Expense in a Automated Fuel System Expansion Document signed by the Project Manager and Contractor, then Contractor shall not be compensated under this Agreement for its provision of such items, **and Contractor shall be considered to have gratuitously provided such items under this Agreement.**

(vi) As the technical expert in the Automated Fuel System, Contractor shall be solely responsible for identifying all hardware, software, Site Preparation, and Professional Services that Contractor shall need to provide (as well as all Reimbursable Travel Expenses that Contractor shall need to incur) in order for Contractor to perform the Automated Fuel System Expansion requested by the Project Manager. In the event that, following Contractor's start of work on an Automated Fuel System Expansion as set forth in an Automated Fuel System Expansion Document, Contractor determines that it needs to provide additional hardware, software, Site Preparation, or Professional Services (or that Contractor needs to incur additional Reimbursable Travel Expenses) in order to

perform the Automated Fuel System Expansion as set forth in that Document, but such items or expenses are not documented in the corresponding Automated Fuel System Expansion Document, then Contractor shall be solely responsible for providing such items and incurring such expenses at its own cost in order to complete the Automated Fuel System Expansion as set out in the Automated Fuel Systems Expansion Document.

- (c) Acceptance of Automated Fuel System Expansion. If, following Contractor's performance of an Automated Fuel System Expansion, the Project Manager determines that Contractor has performed the Automated Fuel System Expansion in accordance with the applicable Automated Fuel System Expansion Document, Contractor's Documentation, and the terms of this Agreement, then the Project Manager shall provide a written "Automated Fuel System Expansion Acceptance Notice" to Contractor documenting such acceptance.

B. Use of Work Products

- (1) Software Provided During Automated Fuel System Expansion. In the event that Contractor provides the City with software during the performance of an Automated Fuel System Expansion under this Agreement, as set forth in Section III. A. (6), (the "Automated Fuel System Expansion Software") Contractor shall provide the City with an unlimited, perpetual, irrevocable, royalty-free license to use such Automated Fuel System Expansion Software at all City locations where the Automated Fuel System is implemented. The license provisions in this paragraph shall replace and supplant any alternative license terms that may accompany such Automated Fuel

System Expansion Software.

(2) Other Works. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement (collectively "Works"). The Works shall include, but shall not be limited to, any Software applications or interfaces developed by Contractor and provided to the City under this Agreement. However, the Works shall not include any Automated Fuel System Expansion Software obtained by the City as a result of Contractor's performance of an Automated Fuel System Expansion, as set forth in Section III. A. (6).

The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Contractor shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights .

Contractor shall execute all documents required by the Director to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Agreement, or if requested by the Director, Contractor shall deliver all Works to the City. Contractor shall obtain written agreements from the Authors which bind them to the terms in this Section.

All Works developed, written, or produced under this Agreement for use as a contribution

to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."

Contractor may retain copies of the Works for its archives. Contractor shall not otherwise use, sell, license, or market the Works.

Contractor shall provide the Director with the source code for all Works that are Software applications or interfaces developed by Contractor and provided to the City under this Agreement.

C. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

D. RELEASE

**CONTRACTOR, ITS PREDECESSORS, SUCCESSORS, AND ASSIGNS
HEREBY RELEASE, RELINQUISH, AND DISCHARGE THE CITY OF HOUSTON,
ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, AND
ITS FORMER, PRESENT, AND FUTURE AGENTS, EMPLOYEES, AND OFFICERS
FROM ANY LIABILITY ARISING OUT OF THE SOLE AND/OR CONCURRENT
NEGLIGENCE OF THE CITY OF HOUSTON FOR ANY INJURY, INCLUDING
DEATH OR DAMAGE TO PERSONS OR PROPERTY WHERE SUCH DAMAGE IS
SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE WORK
PERFORMED UNDER THIS AGREEMENT.**

E. INDEMNIFICATION

CONTRACTOR COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CONTRACTOR'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF CONTRACTOR IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. CONTRACTOR FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND CONTRACTOR, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY

UNMIXED WITH ANY FAULT OF CONTRACTOR.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF CONTRACTOR UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$600,000 PER OCCURRENCE.

F. RELEASE AND INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND

DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

G. INDEMNIFICATION PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and

control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

H. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Worker's Compensation must name the City as an additional insured. All liability policies must be issued by a Company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's Key Rating Guide, Property-Casualty United States. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Worker's Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Errors and Omissions

- \$500,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance
- \$500,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

I. Warranties

(1) Contractor represents and warrants that all Equipment items maintained and supported by Contractor under this Agreement will perform the operating functions for which each item is intended in accordance with its Documentation and will operate together as a system.

(2) Contractor represents and warrants that all Equipment items provided by Contractor in the course of its performance of an Automated Fuel System Expansion under this Agreement will perform the operating functions for which each item is intended in accordance with its Documentation and will operate together as a system.

(3) Contractor warrants that none of the maintenance, support, or repair services it provides for the Equipment under this Agreement, or its performance of any Automated Fuel System Expansions under this Agreement, will modify or affect the Equipment or the Automated Fuel System so that

- (a) the Equipment or the Automated Fuel System does not perform in accordance with the Documentation or the requirements of this Agreement;
- (b) the Equipment or the Automated Fuel System does not accurately record, store, process, calculate, and present all calendar dates or correctly calculate any information dependent on or relating to a calendar date or date(s);
- (c) the Equipment or the Automated Fuel System accurately records, stores, processes, calculates, and presents all calendar dates and correctly calculates any information dependent on or relating to a calendar date or date(s), but (i) there is an impact to the functionality, data integrity, or performance of the Equipment, or (ii) the City is required to obtain additional hardware, software, maintenance services, or support in order for the Equipment to operate in such a manner; or
- (d) the Equipment or the Automated Fuel System (i) loses any functionality with respect to the introduction of records containing dates or (ii) is no longer interoperable and compatible with other software the City uses that may deliver records to the Equipment or the Automated Fuel System, receive records from the Equipment or the Automated Fuel System, or interact with the Equipment or the Automated Fuel System, including but

not limited to back-up and archived data.

(4) Any time that Contractor's performance of maintenance, support, and repair services under this Agreement could affect the ability of the Equipment to meet the warranties set forth in this Agreement, Contractor shall:

- (a) Obtain the Director's approval before proceeding with performance of the maintenance, support, and repair services;
- (b) Upon completion of the maintenance, support, and repair services, submit a test script in a form acceptable to the City that
 - (i) validates that the Equipment complies with the warranties set forth in this Agreement,
 - (ii) identifies the latest future calendar date that the Equipment is able to accurately record, store, process, calculate, and present, and
 - (iii) demonstrates the ability of the Equipment to correctly calculate any information dependent on or relating to a calendar date or date(s) without impacting the functionality, data integrity, or performance of the Equipment.
- (c) Such a "test script" may be any documented procedure which performs such validation to the Director's satisfaction. Examples of test scripts include:
 - (i) computer programs to be run on the Equipment; or
 - (ii) Contractor's written procedures which instruct the City how to test the Equipment.

(5) Contractor warrants that it shall perform all work in a good and workmanlike

manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement. With respect to any parts and goods it furnishes, Contractor warrants:

- (a) that all items are free of defects in title, design, material, and workmanship,
- (b) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (c) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (d) that no item or its use infringes any patent, copyright, or proprietary right.

(6) Liability of Contractor for breach of any and all warranties herein is expressly limited to the remedies provided herein, and in no event shall Contractor be liable for special, incidental, or consequential damages by any reason thereof; during the warranty period set forth in this agreement. In the event that, despite Contractor's performance of the maintenance and support services or an Automated Fuel System Expansion set forth in this Agreement, the Equipment does not perform in the manner set forth in this Agreement, Contractor shall at no cost to the City:

- (a) Repair the Equipment or the Automated Fuel System to the operating condition set forth in this Agreement;
- (b) Replacement of any defective Equipment or components within the Equipment; or

(c) Replace the Equipment with Equipment of equal or greater performance.

Contractor may elect any one or more of the foregoing, but all will be at no cost to the City. If Contractor is unable to perform as set forth above, the City shall be entitled to recover actual direct damages, but in no event shall the Contractor be liable for incidental or consequential damages. This limitation of liability shall not apply to the payment of cost or damage awards referred to in this Agreement or to claims for personal injury or property damage caused by the Contractor's negligence.

J. Reports

Contractor shall submit all reports and progress updates required by the Director.

K. Time of Performance

Contractor shall begin its performance on the Countersignature Date. Contractor acknowledges that time is of the essence.

L. Time Extensions

If Contractor requires an extension of time to complete its performance, then Contractor shall request such an extension in a written notice to the Director. Following the Director's receipt of such notice, the Director may, in his or her sole discretion, extend the time for Contractor to complete its performance. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

M. Personnel of the Contractor

Within five (5) Business Days after receipt of a signed Agreement, Contractor, by written notice to the Director, shall designate an experienced, competent, and knowledgeable full-time employee to act as Contractor's Project Leader. The Project Leader shall be fully authorized to

act for Contractor in technical matters covered by this Agreement. All other matters related to this Agreement shall be addressed to Contractor.

Any or all of Contractor's employees assigned to this Agreement may be replaced by Contractor, with prior approval of the Director, who shall not unreasonably withhold approval, with other in its employment whose qualifications equal or exceed those of the Contractor employees being replaced. Contractor shall give the Director advance written or verbal (immediately confirmed in writing) notice of the designation of a new employee.

At any time during the term of this Agreement, the Director, by written notice, may request that Contractor remove one or more of its employees assigned to this Agreement for reasonable cause. Contractor shall review such written request and shall work with the Director to make satisfactory arrangement, as may be required for Contractor to effect the appropriate staff within ten (10) Business Days of its receipt of such notice. If such a resolution cannot be reached, Contractor shall proceed to replace its employee with one whose qualifications are equal to or exceed those of the employee being replaced.

N. Additions and Deletions

- (1) Additional Equipment. The Director may add additional Equipment items to the group of Equipment items that Contractor is to maintain and support under this Agreement by giving written notification to Contractor. For purposes of this subsection III. N. (1), the "Effective Date" means the date on which Contractor receives such written notification from the Director. As of the Effective Date, each Equipment item added is subject to this Agreement, as if it had originally been a part, but Contractor's charges to maintain and support each added Equipment item starts to accrue only on the Effective Date.

(2) Exclusion of Equipment. The Director may remove certain Equipment items from the group of Equipment items that Contractor is to maintain and support under this Agreement by giving written notification to Contractor. Such notice shall take effect immediately on its receipt by Contractor. More than one notice may be given. When such a notice is received, Contractor shall delete the charge for the excluded Equipment items from the amount(s) charged by Contractor under this Agreement.

(3) Limitation. The total charges for additions to this Agreement must never exceed 25% of the original contract amount unless:

- » the additions are exempt from the competitive bidding or proposal requirements, set forth in Tex. Local Govt. Code Chapter 252; or
- » the City acquires the additions from Contractor through a competitive bid or competitive proposal.

O. Prompt Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

P. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

Q. Compliance with Equal Opportunity Ordinance

Contractor shall comply with City's Equal Employment Opportunity Ordinance as set out

in Exhibit "E".

R. Other Obligations of Contractor

For all fuel site locations where Contractor performs the maintenance and support services set forth in this Agreement:

1. Contractor shall respond within 24 hours of a request from the Project Manager to perform the automated fuel maintenance and support services set forth in this Agreement in order to troubleshoot and correct problem(s) at the City fuel sites.
2. Contractor shall use only equipment, materials, and methods approved by local, state, or national codes for an installation of this type.
3. In the course of performing the maintenance and support services set forth in this Agreement, Contractor shall inspect the electrical power supply and the data communication lines connected to the Equipment. Contractor shall inform the Project Manager of any conditions existing in either the electrical power supply or in the data communication lines that could cause damage to the Equipment and shall take all steps necessary to protect the Equipment so that it is not so damaged until the City corrects such problems to the satisfaction of the Contractor. In no event shall Contractor be held responsible for any damages or disruption of service due in whole or in part to electrical supply or data communication problems.

IV. DUTIES OF CITY

A. Payment Terms

(1) Hardware and Software Maintenance and Support Services Fees. Subject to the terms and conditions of this Agreement, the City agrees to pay and the Contractor agrees to

accept the fees set forth in this Section IV. A. (1) for Contractor's performance of the Hardware and Software Maintenance and Support Services set forth in this Agreement ("Hardware and Software Maintenance and Support Services Fees").

- (a) First Year. During the first year of the Initial Term, Contractor shall charge the City the fees set forth in Exhibit "B" for Contractor's performance of the Hardware and Software Maintenance and Support Services during the first year of this Agreement. The fees set forth in Exhibit "B" reflect a 4% discount over Contractor's standard fees to perform such maintenance and support services, in consideration of the City's advance payment of such fees.
- (b) Subsequent Years. No later than ninety (90) days prior to the start of each subsequent year that follows the first year of this Agreement, Contractor shall identify to the Director the Hardware and Software Maintenance and Support Services Fees that Contractor shall charge during that subsequent year of this Agreement. However, Contractor shall not increase any such Hardware and Software Maintenance and Support Services Fees by an amount that exceeds 5% of the Hardware and Software Maintenance and Support Services Fees then charged by Contractor. At any time prior to the start of a subsequent year of this Agreement the Director may choose to terminate this Agreement rather than pay Contractor's new Hardware and Software Maintenance and Support Services Fees during the subsequent year of this Agreement.
- (c) Payment of Hardware and Software Maintenance and Support Services

Fees. The City shall pay all Hardware and Software Maintenance and Support Services Fees in advance, on the basis of quarterly invoices that Contractor shall submit to the Director every three (3) months during the term of this Agreement. Each invoice shall set forth Contractor's fees to perform the Hardware and Software Maintenance and Support Services set forth in this Agreement during the subsequent three (3) month period.

Contractor shall submit its first invoice on the Countersignature Date.

(2) Additional Replacement Parts. Following Contractor's provision and the Director's acceptance of Hardware Maintenance and Support Services under which Contractor provides an Additional Replacement Part to the City, as set forth in Section III. A. (1) (c) (i), Contractor shall submit an invoice to the Director setting forth the Additional Replacement Part provided by Contractor and the price for that Part as set forth in Exhibit "C".

(3) Professional Services. Following the Project Manager's provision of a Professional Services Acceptance Notice setting forth the City's written acceptance of Professional Services performed by Contractor under a Professional Services Document entered into by the parties under this Agreement, Contractor shall submit an invoice to the City for payment for its performance of such accepted Professional Services. Such an invoice shall set forth

- (a) an itemized listing of the Professional Services performed by Contractor and accepted by the Project Manager,
- (b) the total cost to be charged by Contractor for its performance of such accepted Professional Services, as documented in the Professional Services Document, and

- (c) any Reimbursable Travel Expenses associated with such accepted Professional Services for which the City is to reimburse Contractor, as documented in the Professional Services Document.
- (4) Automated Fuel System Expansion.
 - (a) Interim Payments. Following the end of each calendar month during which Contractor performs work for an Automated Fuel System Expansion set forth in an Automated Fuel System Expansion Document Contractor shall submit an invoice to the City setting forth the following (an "Interim Invoice"):
 - (i) the specific hardware and software items, Site Preparation, and Professional Services provided by Contractor in the course of its performance of that Automated Fuel System Expansion during the previous calendar month, and Contractor's cost to provide such hardware and software items, Site Preparation, and Professional Services, as documented in the Automated Fuel System Expansion Document,
 - (ii) any Reimbursable Travel Expenses incurred by Contractor in the course of its performance of that Automated Fuel System Expansion during the previous calendar month, and the amount of such Reimbursable Travel Expenses, as documented in the Automated Fuel System Expansion Document,
 - (iii) the total of all such costs and expenses incurred by Contractor in the course of its performance of that Automated Fuel System

Expansion during the previous calendar month (the "Total Monthly Cost"),

- (iv) the total amount Contractor shall charge the City for its work during the previous calendar month, which shall equal the Total Monthly Cost times 70% (the "Monthly Charge"), and
 - (v) the retention amount for the previous calendar month, which shall equal the Total Monthly Cost times 30% ("the "Monthly Retention Amount"). Contractor shall not invoice the City for any Monthly Retention Amounts associated with Contractor's performance of an Automated Fuel System Expansion until the Project Manager has accepted Contractor's performance of that entire Automated Fuel System Expansion as documented in an Automated Fuel System Expansion Document and provided Contractor with an Automated Fuel System Expansion Acceptance Notice.
- (b) Final Payment. Following Contractor's receipt of a written Automated Fuel System Expansion Acceptance Notice from the Project Manager Contractor shall submit an invoice for final payment for the corresponding Automated Fuel System Expansion performed by Contractor as documented in an Automated Fuel System Expansion Document. Such an invoice shall set forth:
- (i) the specific hardware and software items, Site Preparation, and Professional Services provided by Contractor in the course of its performance of that Automated Fuel System Expansion for which

- Contractor has not previously invoiced the City in an Interim Invoice, and Contractor's cost to provide such hardware and software items, Site Preparation, and Professional Services as documented in the Automated Fuel System Expansion Document,
- (ii) any Reimbursable Travel Expenses incurred by Contractor in the course of its performance of that Automated Fuel System Expansion for which Contractor has not previously invoiced the City in an Interim Invoice, and the amount of such Reimbursable Travel Expenses, as documented in the Automated Fuel System Expansion Document,
 - (iii) the total of all costs and expenses incurred by Contractor in the course of its performance of that Automated Fuel System Expansion for which Contractor has not previously invoiced the City in an Interim Invoice (the "Total Remaining Cost"),
 - (iv) the total of all Monthly Retention Amounts associated with the Automated Fuel System Expansion that were withheld from the previous Interim Invoices issued by Contractor in the course of its performance of the Automated Fuel System Expansion, as set forth in Section IV. A. (4) (a) (v) (the "Total Retention Amount"), and
 - (v) the total amount Contractor shall charge the City under the invoice, which shall equal the Total Remaining Cost plus the Total Retention Amount.

(5) Payment of Invoices. The City's payment of all amounts under this Agreement is

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subject to the allocation of funds as set forth in Section IV. B. The City shall pay Contractor within 30 days of the receipt and approval of the invoices.

(6) Refund Due to Early Termination. If this Agreement expires or is terminated before the end of a period for which payment has been made in advance, Contractor shall refund a percentage of the City's advance payment equal to the percentage of the prepaid period remaining after such expiration or termination. This refund shall be made within thirty (30) days of termination of this Agreement.

(7) Disputed Invoices. If any items in any invoices submitted by the Contractor are disputed by the City for any reason, including lack of supporting documentation, the City shall temporarily delete the disputed item and pay the remaining amount of the invoice. The City shall promptly notify the Contractor of the dispute and request clarification and/or remedial action. After any dispute is settled, the Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

B. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$138,763.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the

Director and the City Controller to Contractor in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Director)
Director

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds.

The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

C. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

D. Access to Data

The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

E. Other Obligations of the City

For all fuel site locations:

1. The City shall provide personnel or contractors who shall be responsible for the following:
 - a. Troubleshooting site Hardware and report findings to Contractor or to designated electrician.
 - b. Performing minimum adjustments or Preventive Maintenance to the Equipment and controllers.
 - c. Attending user group functions as needed.

Despite the City's provision of such personnel or contractors, Contractor shall remain solely responsible for performing all services set forth in this Agreement.

2. The City shall provide breaker panels, space, and any other necessary power

equipment to be used by Contractor in maintaining and supporting the Hardware under this Agreement.

3. The City shall provide one (1) dial-up business grade communication line terminated with a RS232 connector per pump controller. This line shall be located in the telecommunications room nearest and most accessible to the fueling equipment.
4. The City shall be responsible for providing and installing devices to correct any electrical power supply problems (including but not limited to, noise, spikes, sags or other interferences or disruptions) that the Contractor determines are required to bring the power supply current to a level acceptable for operating the Equipment.
5. The City shall be responsible for providing and installing devices to correct any communication line problems (including but not limited to, noise, spikes, sags or other interferences or disruptions) that the Contractor determines are required to bring the communication line to a level acceptable for operating the Equipment.

V. TERM AND TERMINATION

A. Contract Term

This Agreement shall become effective on the Countersignature Date and shall remain in effect for three (3) years thereafter (the "Initial Term") unless sooner terminated as provided for in this Agreement.

Contractor acknowledges and agrees that any services it provides to the City after the termination date of this Agreement, unless an extension of time of this Agreement has been

granted or unless the Agreement has been renewed as set out below, **will be deemed to be gratuitously provided**, and the City shall have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion.

Upon expiration of the Initial Term, this Agreement shall be automatically renewed for two (2) successive one-year terms ("the Renewal Terms") upon the same terms and conditions unless the City shall fail to make sufficient supplemental allocations or if the Director gives written notice of non-renewal at least thirty (30) days before expiration of the then-current term.

B. Termination for Convenience by City

The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV. A. unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE

NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES
RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

C. Termination for Cause

Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after Contractor's receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director shall act on behalf of the City to notify Contractor of a default and to effect termination.

D. Effects of City's Termination for Cause

Upon receipt of notice of final termination from the Director, the Contractor shall, unless the notice directs otherwise, immediately discontinue all services in connection with this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

2. This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

4. If the Force Majeure continues for more than 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**

5. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

C. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

D. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

E. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

F. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

G. Inspections and Audits

City representatives may have the right to perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four (4) years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

H. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

I. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

J. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

K. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

L. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

M. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

N. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

O. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.318(c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be

paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

P. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

Q. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Equipment item passes from Contractor to the City upon acceptance by the City.

R. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "F," together with a written designation of all safety impact

positions and,

- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "H." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

EXHIBIT "A.1"**PROFESSIONAL SERVICES**

Product Number	Description	Unit Cost
FF900	FuelForce Hardware Installation and Controller Checkout (1 per controller)	\$600
FF900-2	FuelForce Hardware Installation and RIT Checkout (1 per RIT)	\$250
TW900	Tankwatch Hardware Checkout (1 per site)	\$350
FF900-4	Fuel Receiver Hose Kit at the Island (1 per Hose Kit)	\$200
FF900-8	Installation of VIU on selected vehicles (per vehicle)	\$285
FF901	FuelForce Consulting and Instruction (per day plus Expenses)	\$900
FF903	Project Management (per site including expenses)	\$1,200
DE001	Design CMR for dual fuel entry screen (per day including expenses)	\$1,100
DE002	Design, Program, and Test dual entry screen (per day including expense)	\$1,100
DE003	Install and Train on software (days including expenses)	\$900

EXHIBIT "B"
MULTIFORCE HARDWARE AND SOFTWARE MAINTENANCE AND SUPPORT SERVICES

Product Identification	Support Description	QTY.	Cost Per Month	Extended Cost Per Month	Annual Cost
SOFTWARE MAINTENANCE AND SUPPORT SERVICES					
UFCSS	FUELFORCE/PC Host Software Support				
	Administration	3	\$99.00	\$297.00	\$3,564.00
	Additional Callers	4	\$55.00	\$220.00	\$2,640.00
			Subtotal, UFCSS:	\$517.00	\$6,204.00
CSSUSER -	Fire	1	\$8.25	\$8.25	\$99.00
	Parks	2	\$8.25	\$16.50	\$198.00
	Police	10	\$8.25	\$82.50	\$990.00
	Solid Waste	4	\$8.25	\$33.00	\$396.00
	Health	1	\$8.25	\$8.25	\$99.00
	PW&E	15	\$8.83	\$132.50	\$1,590.00
	PW&E Mobile Tankers	2	\$10.00	\$20.00	\$240.00
			Subtotal, CSSUSER:	\$301.00	\$3,612.00
TankWatch/WRA	Website hosting				
	Site Fee	1	\$395.00	\$395.00	\$4,740.00
	Fire	1	\$17.00	\$17.00	\$204.00
	Parks	2	\$17.00	\$34.00	\$408.00
	Police	10	\$17.00	\$170.00	\$2,040.00
	Solid Waste	4	\$17.00	\$68.00	\$816.00
	Health	1	\$17.00	\$17.00	\$204.00
	PW&E	15	\$17.00	\$255.00	\$3,060.00
			Subtotal, TankWatch/WRA Site Fee:	\$561.00	\$6,732.00
			Subtotal, TankWatch/WRA:	\$956.00	\$11,472.00
Tank Fee	Per 1,000 gallon tank capacity	1083	\$1.85	\$2,003.55	\$24,042.60
	TOTAL, SOFTWARE MAINTENANCE AND SUPPORT SERVICES:			\$3,777.55	\$45,330.60

Product Identification	Support Description	QTY.	Cost Per Month	Extended Cost Per Month	Annual Cost
	Fire	1	\$6.33	\$6.33	\$76.00
	Parks	3	\$6.33	\$19.00	\$228.00
	Police	19	\$6.33	\$120.33	\$1,444.00
	Solid Waste	12	\$6.33	\$76.00	\$912.00
	Health	1	\$6.33	\$6.33	\$76.00
	PW&E	22	\$6.33	\$139.33	\$1,672.00
Subtotal, FF805-A:				\$367.33	\$4,408.00
TOTAL, HARDWARE MAINTENANCE AND SUPPORT SERVICES:				\$4,834.50	\$58,014.01

EXHIBIT "C"
REPLACEMENT PARTS NOT INCLUDED IN THE HARDWARE MAINTENANCE AND SUPPORT SERVICES PROVIDED
BY CONTRACTOR

Part Name	City Department to Which Part Shall Be Provided:	Price per Part:	Estimated Yearly Quantity	Estimated Yearly Charge
Viro Receiver Assemblies	PW&E	\$376.00	8	\$3,008.00
VIU3's	PW&E	\$150.00	40	\$6,000.00
TOTAL ESTIMATED YEARLY CHARGE:				\$9,008.00

EXHIBIT "D"

FUELFORCE HARDWARE REPLACEMENT PARTS INVENTORY

ITEM	PROD. #	DESCRIPTION
Hardware options		
	FF101	Receipt printer
	FF103	24 volt power supply (required for hose reel control)
	FF306	Island terminal heater
	FF805	Additional 4 hose board (max 2 per island terminal)
	FF102	Mag card reader third party provided
	FF102P	Proximity card reader third party provided
	VIU000	Non-interventional passive fueling system third party provided
	WC100	Wireless Communication Module (CDPD)
Spare Parts		
	FF10055	Ampro Motherboard Assembly
	FF10055-824	FF824 SCP/HCP site controller (Replacement Unit)
	FF10055-LB3	Ampro Motherboard
	FF10060	RIT Processor/Door Assembly
	FF107	Power Supply (LPT22)
	FF3144	Internal Modem Card (ISA) for 486 motherboard
	FF804-00	RIT processor board
	FF805	4 hose control board
	FF814-02	SCP 8 port interface board (ISA)
	FF814-03	3.5" disk drive assembly
	FF814-04A	Solid State Hard Drive
	FF814-04B	Hard drive assembly (Memtek SS Flash Drive)
	FF814-05	Flat faced keyboard/overlay
	FF814-05	LCD Display assembly
	FF814-12	Phone line surge protector (TSU-6)
	FF814-14	RS232 Transcient Surge Protector (DLP-3)
	FF8410	Aprotek modem (REV3-1) 33.6 kb
	FF901/104	Reset Module
	FF902	Serial Interface/Reset Module
	FF814-02A	SCP 2 port interface board (ISA)
	FF903	2 hose control module (DC)
	FF907	Cable Interface (Rev B)
	FF908	Surge Unit Assembly
	FF909	Hose Control Module (PC104)
	FF910	Inverter Assembly

EXHIBIT "E"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "F"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "G"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, that will be involved

in performing _____.
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "H"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20_____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified.
The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's
Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees
have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Human
Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions
performing on the City of Houston contract. The number of employees in safety impact positions
during this reporting period is _____.

Initials From _____ to _____ the following test has occurred
(Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

Initials Any employee who tested positive was immediately removed from the City worksite
consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with
established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration
are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)